

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

SECTION L

CONSTRUCTION FUNDING

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

I. CONSTITUTIONAL FOUNDATION

- A. U.S. Constitution, Article I, Section 8, Clause 1
- The power to tax and spend.
- B. U.S. Constitution, Article I, Section 8, Clause 16
- Organizing and training the militia.
- C. U.S. Constitution, Article I, Section 9, Clause 7
- No money spent except as a consequence of a
lawful appropriation.

II. STATUTORY FOUNDATION

- A. 10 U.S.C. § 2801 *et seq.*
- B. Chapter 169, Title 10, United States Code.

III. REGULATORY FOUNDATION

- A. Army Regulation 37-1, Army Accounting and Fund
Control (30 Apr. 1991).
- B. Air Force Regulation 177-16.
- C. National Guard Pamphlet 37-1, Financial
Management.

IV. CONSTRUCTION DEFINITIONS

- A. CONSTRUCTION

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

1. STATUTORY

a. Military Construction:

- (1) Includes any construction, development, conversion, or extension of any kind carried out with respect to a military installation.
- (2) Includes all work necessary to produce a complete and usable improvement to an existing facility.
- (3) 10 U.S.C. § 2801.
- (4) Also includes the replacement of a destroyed or damaged real property facility. 10 U.S.C. § 2854.

b. Minor Military Construction:

- (1) Is Military Construction as defined above.
- (2) Is for a single undertaking at the installation.
- (3) Has an approved cost equal to or less than \$1.5 million.
- (4) 10 U.S.C. §§ 2801, 2805.

2. REGULATORY

- a. Services: AR 415-35; AFRs 86-1 & 172-1, vol. 1

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

- b. The erection, installation, or assembly of a new building.
- c. Includes work on an existing facility:
 - (1) That adds to a facility's overall dimensions through addition, expansion or extension.
 - (2) That is an alteration of the interior or exterior arrangements of a facility to improve its current purpose including the installation of equipment made part of the existing facility. Additions, expansions, and extensions of facilities are not alterations.
 - (3) That is a conversion of the interior or exterior arrangements of a facility so that the facility can be used for a new purpose. This includes installation of equipment made a part of the existing facility.
 - (4) That is a replacement or rebuild of a real property facility that has been destroyed or damaged beyond economical repair.
 - (5) That relocates a facility from one installation to another.
 - (a) Moving a building from one site to another either intact

CONSTRUCTION FUNDING
SECTION L

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

or disassembled to be reassembled at the new site. Includes connection of new utility lines; relocation of roads, pavements, or airstrips is excluded.

(b) Relocation of two or more facilities into a single facility will be considered a single project.

(6) Installation of equipment that is made part of a new or existing facility including related site preparation, excavation, filling, landscaping, or other land improvements.

3. NGB REGULATORY

a. ARNG: NGR (AR) 415-5; NGR (AR) 415-10;
NGR (AR) 420-10

(1) Construction: The erection, installation, or assembly of a new facility; the addition, expansion, extension, alteration, conversion, rehabilitation, restoration, or replacement of an existing facility; or the relocation of a facility from one location to another. This includes equipment installed in and made a part of such facilities and related site preparation, excavation, filling, and landscaping, or other land improvements. For approval

CONSTRUCTION FUNDING
SECTION L

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

purposes, costs of such projects include all Federal funded costs for labor (except troop labor), material, and equipment rental required for project completion.

(2) Categories

(a) Major Construction: ARNG construction projects normally costing more than \$300,000 and lined items in the program submitted to Congress.

(b) Real Property Construction: A construction project accomplished under the OMARNG appropriation with a total actual cost of less than \$300,000.

b. ANG: Construction is the work required to erect, install, or assemble a new facility; addition, alteration, expansion or extension, conversion or replacement of an existing facility, relocation of existing facilities and installed equipment. It includes rearrangement and providing of interior built up partitions; installation or rearrangement of air conditioning and interior utility systems. ANGR 86-1

B. Related Definitions

1. ARNG: AR 415-35; (NGR (AR) 415-5; NGR (AR) 415-10; NGR (AR) 420-10)

**CONSTRUCTION FUNDING
SECTION L**

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

- a. Act of Nature Damages: Damages resulting from natural disasters such as, but not limited to, hurricanes, tornadoes, lightning, flooding, avalanches, slides, tidal waves, and earthquakes.
- b. Alteration: The work required to adjust interior arrangements or other physical characteristics of an existing facility so that it may be more effectively adapted to or used for its presently designated functional purpose. Alteration includes work on equipment installed in or made a part of an existing facility. Additions, expansions, and extensions are not included in alteration. Alterations costing less than \$2,000 may be accomplished under the terms of Service and Training Site Agreements. Alterations costing \$2,000 or more will be accomplished under procedures for construction.
- c. Project
 - (1) A single undertaking that includes all construction of building equipment necessary to accomplish a specific purpose and produce a complete and usable facility or a complete and usable improvement to an existing facility is established by the approved DD Forms 1390/91.
(NGB (AR) 415-5)
 - (2) A single undertaking that is readily and separately identified

CONSTRUCTION FUNDING
SECTION L

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

as a logical task that will culminate in a complete and functional facility. (NGB (AR) 420-10)

- d. Rehabilitation: The renovation, restoration, or reconstruction of a deteriorated real property facility. The work required to place the facility in conformance with authorized construction standards and codes is classified as construction work.

2. ANG: AFR 86-1; ANGR 86-1

- a. Alteration: Any work required to adjust the interior arrangement of a building (including interior demolition); to relocate a building or structure on base; or to change the physical characteristics of a building, structure or system so that a more desirable utilization is achieved.
- b. Change Utilization: Facility conversion to another usage that does not require a major structural change.
- c. Conversion: A major structural revision to a facility that changes the purpose for which the facility was originally designed.
- d. Project: Work planned to be accomplished on one or more real property facilities. A project must

CONSTRUCTION FUNDING
SECTION L

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

provide a complete usable facility or a complete and usable improvement to an existing facility when completed.

- e. Replacement: The construction of a real property facility to be used in place of a similar facility destroyed, damaged, or deteriorated.

V. MAINTENANCE AND REPAIR

A. Maintenance

- 1. Maintenance is not construction.

- 2. Regulations

- a. Services

- (1) Maintenance is recurrent work to prevent deterioration. It is work required to preserve or maintain a facility in such condition that it may be used for its designated purpose.

- (2) AR 420-10; AFR 86-1

- b. NGB

- (1) ARNG: Maintenance is the day-to-day, periodic or scheduled work required to preserve a real property facility in such condition

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

that it may be effectively used for its intended purpose. (NGR (AR) 415-35; NGR (AR) 420-10)

- (2) ANG: Maintenance is the recurrent day-to-day, periodic or scheduled work required to preserve a real property facility. It includes work required to restore components that have deteriorated from fair wear and tear, and other work on a facility to prevent damage or deterioration to the facility that otherwise would be more costly to restore. (ANGR 86-1)

B. **Repair**

1. Repair is not construction.
2. Regulations
 - a. Military Services -- Army and Air Force
 - (1) Repair is the restoration for use for a designated purpose by overhauling, reprocessing, or replacing parts or materials that have deteriorated by action of the elements or by wear and tear in use, and which have not been corrected through maintenance.
 - (2) AR 420-10; AFRs 86-1 & 172-1, vol. 1
 - b. NGB

CONSTRUCTION FUNDING
SECTION L

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

- (1) ARNG: Repair is the correction of a failed component of a real property facility (that is included in the Army National Guard) to such condition that it may be effectively used for its designated purpose by overhaul, overlay, reprocessing, or by replacement of constituent parts or materials that have deteriorated or have been damaged by action of the elements, or wear and tear in use. Repair projects in excess of 50% of replacement cost of facility require Chief, NGB approval. (NGR (AR) 415-35; NGR (AR) 420-10)

- (2) ANGR: Repair is the restoration of a real property facility or component thereof to such condition that it may be used effectively for its designated purpose by overhaul, or reprocessing, or replacement of its constituent parts or materials that have deteriorated by actions of the elements or wear and tear in use which cannot be corrected through maintenance. Repair includes restoring or replacing components (to current standards) of facilities damaged by fire, storm, explosions, the elements, and other disasters. Repair work will not be accomplished if the cost of the work will exceed 50% of the current complete replacement cost of the structure, pavement, plant or system. Repair work which exceeds 50% of replacement cost will be classified as construction.

**CONSTRUCTION FUNDING
SECTION L**

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

VI. MILITARY CONSTRUCTION STATUTES AND APPROPRIATIONS

A. The Military Construction Codification Act (MCCA)

1. The MCCA (1982) revised and codified in a new chapter (Chapter 169) of Title 10, United States Code, (10 U.S.C. §§ 2801-2864) various permanent or recurring provisions in DOD Authorization and Appropriations Acts relating to military construction and military family housing.
2. The MCCA makes permanent law various restrictions and conditions on expenditure of funds for minor construction.

B. Annual Appropriations and Authorization Acts

1. The Military Construction Appropriation ("MCA") in annual appropriations acts funds specified military construction projects with costs estimated to exceed \$1.5 million.
 - a. 16 separate military construction appropriations in FY 95 MCA. (Pub.L. No. 103-307)
 - b. Army, Air Force, and NavyFY 95 MCA
 - (1) MCA: \$550,476,000
 - (2) MCN: \$385,110,000
 - (3) MCAF: \$516,813,000

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

- b. National Guard FY 95 MCA
 - (1) MCARNG: \$188,062,000
 - (2) MCANG: \$249,056,000
- 2. Minor construction projects not specified in the MCA are funded annually by the Unspecified Minor Construction Program. [The Army's appropriation is titled "Minor Military Construction, Army" ("MMCA").] These funds are available for use under the terms of 10 U.S.C. § 2805a.
 - a. FY 95 MMCA: \$12,000,000
 - b. FY 95 MMCN: \$7,000,000
 - c. FY 95 MMCAF: \$7,000,000
 - d. FY 95 MMCARNG: \$5,167,000
 - e. FY 95 MMCANG: \$4,000,000
- 3. Operation and Maintenance (O&M) Appropriation
 - a. GAO interprets 41 U.S.C. § 12, that provides that a contract for construction can only obligate funds specifically appropriated for such construction, to mean that all military construction projects must be specifically authorized and specific funds appropriated. General appropriations such as the O&M appropriation cannot be used.
 - b. MCCA provides a specific statutory

**CONSTRUCTION FUNDING
SECTION L**

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

exception to 41 U.S.C. § 12 permitting use of O&M funds for unspecified minor construction projects costing not more than \$300,000.

c. Current DOD Policy is that minor construction projects of \$300,000 or less will normally be financed with O&M Funds.

(1) Use of MCA or MMCA funds for such projects requires approval.

(2) DOD Dir. 4270.24; AR 415-35; AFR 172-1.

VII. STATUTORY TERMS AND RESTRICTIONS

A. Renovation

1. 10 U.S.C. § 2811 allows use of O&M funds for renovation that combines maintenance, repair and minor construction for:
 - a. an entire single purpose facility; or,
 - b. one or more functional areas of a multi-purpose facility.
2. Such a renovation project cannot exceed \$1 million. (10 U.S.C. § 2805(a)(1)).
3. Construction of new facilities or additions to existing facilities cannot be carried out under this authority.
4. See AFR 86-1 for definition and restrictions concerning renovations.

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

B. Restoration or Replacement of Damaged or Destroyed Facilities

1. 10 U.S.C. § 2854 provides authority for a Service Secretary to repair, restore, or replace a damaged or destroyed facility. "Damaged" or "Destroyed" means costs of repair more than 50% of current replacement cost. (NGR (AR) 420-10; ANGR 86-1)
2. Conditions
 - a. O&M funds can be used if the cost is less than \$300,000.
 - b. If costs exceed minor construction amount (\$1.5 million, 10 U.S.C § 2805(a)(1)), Service Secretary must notify Congress of the amount and source of funds at least 21 days before commencing project.
 - c. Project, if over \$1 million, may be carried out only after Congressional approval or 21 days.

C. Exercise-Related Construction

1. 10 U.S.C. § 2805(c)(2) prohibits use of O&M funds for exercise-related construction outside the United States.
2. This restriction was inserted in 1987 in reaction to large O&M expenditures to construct permanent facilities for the Big Pine II exercise in Honduras. (63 Comp. Gen. 422 (1984))

**CONSTRUCTION FUNDING
SECTION L**

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

3. Exercise related construction outside the United States must be funded from the unspecified minor construction accounts; such expenditures are limited to \$5 million per military department.
4. This limitation does not restrict O&M funding of temporary structures (tent platforms, field latrines, etc.) that are completely removed at the end of the exercise.
5. The Secretary of Defense is required to notify Congress of the scope of any proposed exercises if amounts expended for construction, either temporary or permanent, will exceed \$100,000.

D. Special Situations

1. Emergency Construction (10 U.S.C. § 2803)
 - a. Secretary of Military Department may carry out construction using unobligated funds appropriated for military construction of any project specifically authorized if:
 - (1) The project is vital to the national security; and,
 - (2) The project is so urgent that inclusion of the project in the next Military Construction Authorization Act is inconsistent with national security.

**CONSTRUCTION FUNDING
SECTION L**

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

- b. Maximum amount in any fiscal year that can be obligated under this authority is \$30 million for each military department.
 - c. Carries a 21 day reporting requirement to Congress.
2. Contingency Construction (10 U.S.C. § 2804)
- a. Secretary of Defense may carry out, or authorize a military department to carry out, a construction project not otherwise authorized by law if the Secretary of Defense determines that deferral of the project to the next Military Construction Authorization Act would be inconsistent with national security or national interest.
 - b. Carries a 21 day reporting requirement to Congress.
3. War or National Emergency (10 U.S.C. § 2808)
- a. In the event of a war or national emergency requiring the use of the armed forces, the Secretary of Defense may undertake any construction projects necessary to support the armed forces.
 - b. Such projects must be within the total amount of unobligated military construction funds, including funds appropriated for family housing.
 - c. This authority terminates at the end of the war or national emergency.

CONSTRUCTION FUNDING
SECTION L

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

E. Cost Variations (10 U.S.C. § 2853)

1. Authorized cost of an approved military construction project may be increased by 25% (\$1.5 million for project funded by military minor construction funds) if the increase is required because of unusual variations in cost that could not have been reasonably anticipated.
2. This authority cannot be used to increase the scope of the project.
3. Cost of military construction cannot be reduced by more than 25% without secretarial determination.
4. Increase and decrease limitations do not apply if:
 - a. The Secretary approves cost increase or scope reduction.
 - b. The committees are given a 21 day notice.
 - c. These limitations do not apply to within scope contract modifications or settlements with contractors.

F. Special NGB Limitations

1. Chapter 133 of 10 U.S.C. provides special rules for NGB construction.
2. 10 U.S.C. § 2233

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

- a. NGB can acquire facilities or construct facilities (by contribution to the States or otherwise) for National Guard purposes and pay 100% of costs of:
 - (1) Facilities on Federally owned land;
 - (2) Facilities to be jointly used by two or more reserve components on state-owned or leased land;
 - (3) Facilities made necessary by conversion, redesignation, or reorganization of the ARNG or ANG; or,
 - (4) Arms room facilities. (10 U.S.C. § 2233(a)(1), (2), (3) & (6)).
- b. NGB may contribute 75% of the cost (exclusive of land costs) of construction of armories on State land. (10 U.S.C. § 2233(a)(4), (5); 10 U.S.C. § 2236(b))
- c. 21 day Congressional notification required for expenditure over \$300,000 unless facilities are acquired by lease, where Congress has authorized facility, where location and purpose of the facility is the same as authorized and the scope of the project has not been reduced by more than 25%, and where the project estimate is not more than 25% or \$1.5 million, whichever is lesser over the approved project cost. (10 U.S.C. § 2233a)

**CONSTRUCTION FUNDING
SECTION L**

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

G. Miscellaneous Terms and Conditions

1. A/E Services (10 U.S.C. §§ 2807 & 2855)
 - a. Authorizes use of construction appropriations for A/E services for projects not specified by law.
 - b. Permits the obligation of different fiscal year military construction appropriations for A/E study, planning, design, architectural, and engineering services to the extent the appropriations are available for obligation.
 - c. Prohibits A/E contracts from being set aside for small businesses unless the estimated contract cost is below a threshold and requires set aside if below threshold; current threshold is \$85,000. (DFARS 219.502-1)
2. Environmental Response (10 U.S.C. § 2810)
 - a. Authorizes construction project, not otherwise authorized by law, determined by Secretary of Defense (or Service Secretary) to be necessary to carry out CERCLA "Response Action."
 - b. 21 day Congressional notice period required.
 - c. "Response Action" is an action under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et. seq.

**CONSTRUCTION FUNDING
SECTION L**

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

3. Base Closures (10 U.S.C. § 2687)
 - a. Any construction to support relocation of civilian personnel from a closed or realigned base can be undertaken without Congressional approval.
 - b. Notice to Congress must discuss effects of proposed closure or realignment and no action may be taken until 30 "legislative days" have passed.

**H. Appropriations And Authorization Act Limitations
And Conditions**

1. FY 1991 MCA Act prohibited use of cost-plus-fixed fee contracts for contracts expected to exceed \$25,000 for work performed in the United States, except Alaska. Restriction continued in § 101 of FY 93 MCA Act.
2. Selected FY 95 MCA Act (Pub.L. No. 103-307) limitations:
 - a. § 104: Provides that funds appropriated in the Act may not be used to begin construction of new bases inside the United States.
 - b. § 108: Prohibits procurement of steel for any construction project for which American steel producers, fabricators and manufacturers have been denied the opportunity to compete.
 - c. § 119: Provides for the five year availability of funds appropriated under the Act.

**CONSTRUCTION FUNDING
SECTION L**

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

3. Selected FY 92 Military Construction Authorization Act (Pub.L. No. 102-190) limitations and conditions:
 - a. § 2810: Amends 10 U.S.C. 2233(a)(2) by permitting 100% Federal funding of joint use armories built on state land.
 - b. § 2804: Amends 10 U.S.C. 2233(b) by increasing the limitation on use of OMA funds for minor construction to \$300,000.
 - c. §§ 2701, 2702: Restricts availability of FY 92 authorizations to three years in some cases and extends FY 91 authorizations for a year.
 - d. § 2807: Amends 10 U.S.C. § 2805 to increase unspecified minor construction limit to \$1.5 million and to increase the general O&M funding limit to \$300,000.

VIII. FUNDED V. UNFUNDED COSTS

A. Funded Costs

1. All costs except those considered "unfunded" apply statutory or regulatory project cost limitations. (AR 415-35)
2. Funded costs include:

**CONSTRUCTION FUNDING
SECTION L**

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

- a. Materials and supplies for the project,
- b. Labor (except military personnel),
- c. Military Personnel TDY costs,
- d. Maintenance and operation costs of government equipment used in the project,
- e. Value of real property relocated within an installation,
- f. Transportation and relocation costs of moving buildings,
- g. Purchase cost of new land,
- h. COE or NAVFAC overhead charges (NGR (AR) 420-10), and
- i. The portion of installation overhead or support costs that can be identified and represent additional costs that would not have been incurred but for the project. (NGR (AR) 420-10)

B. Unfunded Costs

- 1. Unfunded costs are reported even though they do not apply to project cost limitations.
- 2. Unfunded costs include:
 - a. Materials, supplies and equipment received as excess distribution from another department or non-Army transportation costs,
 - b. Depreciation of government equipment - operation and maintenance of equipment is funded,
 - c. Salaries of military personnel - note restriction on use of troop labor in AR 420-10,

**CONSTRUCTION FUNDING
SECTION L**

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

- d. Costs of fees, permits, licenses in compliance with environmental statutes or regulations,
- e. Planning and design costs, and
- f. Nonappropriated funds used in the project.

IX. PROJECT LIMITATIONS

A. Project Definition:

1. Army:

- a. A minor construction project is a single undertaking including all work needed to accomplish a specific purpose and produce a complete and usable facility or improvement to an existing facility.
- b. A maintenance or repair project may cover more than one facility but must be a single undertaking with a finite scope.

2. Air Force: Work on one or more facilities providing a complete and usable facility or improvement to an existing facility.

- B. Subdivision of projects to meet project approval limitations is prohibited.
- C. Planned incremental construction or phasing of construction is prohibited.
- D. Secretarial approval required for any project proposed in military construction authorization legislation and denied by Congress.

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

- E. O&M minor construction authority will not be used to begin or complete projects financed under other authorizations.
- F. Approval for minor construction projects in the Army expires for projects over \$300,000 unless a contract is awarded within 8 months of the project approval date. (AR 415-35)
- G. Nonappropriated funds may be used in conjunction with appropriated funds if the work funded by the nonappropriated funds can be identified as fulfilling a purpose different from the purpose served by the appropriated funds.
- H. Cannot complete project with O&M funds when costs exceed \$300,000.
 - 1. No statutory cost variation for O&M funded minor construction projects - authority absolutely limited to \$300,000.
 - 2. If O&M funded minor construction goes over \$300,000, stop work, deobligate O&M funds, and obligate military construction appropriations.
 - 3. O&M funded projects should be permitted at a reasonable amount less than \$300,000 (i.e. \$275,000) to accommodate changes, etc.

**CONSTRUCTION FUNDING
SECTION L**

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

X. CONSTRUCTION APPROVAL LEVELS

A. Army, Navy, and Air Force:

1. O&M Funded Construction Projects:
 - a. \$300,000 and less: MACOM approval.
2. O&M M & R Projects:
 - a. MACOMS may delegate when:
 1. Less than \$2 million.
 2. Repairs less than 50 percent of replacement cost exceeding \$200,000.
 3. Less than \$20per square-foot for WWII temporary buildings.
 - b. All other projects: HQDA (DAEN-ZCF-B)

B. Army National Guard:

1. MCARNG Funded Construction Projects:
 - a. \$50,000 or less: USPFO.
 - b. Over \$50,000 to \$300,000: NGB.
 - c. Over \$300,000 to \$500,000: Assistant Chief of Engineers (DA) (over \$300,000 21 day Congressional notification).
 - d. \$500,000 to \$1.5 million: Secretary of the Army after 21 day Congressional notification.

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

- e. Over \$1.5 million: Congress.
- 2. OMARNG Funded M & R Projects:
 - a. \$100,000 or less: USPFO.
 - b. Over \$100,000 to \$2 million: NGB.
 - c. Over \$2 million: DA.
- C. **Air Guard:**
 - 1. O&M Construction Funded Projects
 - a. Up to \$50,000: USPFO.
 - b. \$50,000 to \$300,000: NGB.
 - 2. MCANG Funded Construction Projects
 - a. Up to \$300,000: NGB.
 - b. \$300,000 to \$1.5 million: Secretary of the Air Force.
 - c. \$1.5 million plus: Congress.
 - 3. OMANG M & R Projects:
 - a. Maintenance:
 - (1) Up to \$50,000: USPFO.
 - (2) Over \$50,000 to unlimited: NGB.

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONSTRUCTION FUNDING

b. Repair:

- (1) Up to \$50,000: USPFO.
- (2) Over \$50,000 to \$400,000: NGB.
- (3) Over \$400,000: Secretary of the Air Force.
- (4) Special rules on restoration of damaged property.

- 4. AF combined (M&R & MCANG Funded) projects require NGB approval (also subject to above approval requirements).

XI. STEPS FOR FISCAL LAW REVIEW OF CONSTRUCTION ACQUISITIONS

A. Define the Work

- 1. Determine the nature of the work in terms of the statutory and regulatory definitions of military construction and military minor construction.
- 2. Assess whether the work is one of the following:
 - a. Maintenance,
 - b. Repair,
 - c. Construction, or
 - d. A combination of the above.

B. Define the Scope of the Project

**CONSTRUCTION FUNDING
SECTION L**

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTRUCTION FUNDING

C. Apply Statutory and Regulatory Rules

D. Determine Applicable Dollar Limits

1. Statutory

2. Regulatory

E. Determine Proper Approval Authority

XII. CONCLUSION